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10/780,069	02/17/2004	Richard Emil Kajander	7362	9467

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/780,069
Filing Date: February 17, 2004
Appellant(s): KAJANDER, RICHARD EMIL

Robert D. Touslee
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/02/07 appealing from the Office action mailed 4/19/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,187,697	Jaffee et al et al	02-2001
2003/0175478	Leclercq	09-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. Claims 24, 26-30, and 39-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jaffee et al (US 6,187,697) in view of Leclercq (US 20030175478).

The patent issued to Jaffee et al., discloses fibrous nonwoven multiple layer composites (abstract). The nonwoven layers can be made of glass fibers (column 5, line 27) of different lengths and fiber diameters, but specifically shows that 13 micron in diameter is used (col. 6, line 6). A binder is used to bond the fibers together. Jaffee et al., teach that fibers and particles are bonded together with the binder (column 2, 20-25). Said particles are a size ranging from minus 40 and plus 100 mesh (column 2, 35-45). With regard to the limitation of at least 95 wt. % of the clay and inorganic filler having a particle size less than 200 mesh, it is the position of the Examiner that said limitation is met since Jaffee et al., teach that all of the particles have a size ranging from minus 40 and plus 100 mesh. Jaffee et al., teach that the binder comprises the disclosed particles (column 2, 50-60). Jafee et al., teach applying the particle comprising binder to the top of the mat (column 2, 60-67). Jaffee et al., teach clay and inorganic powders. Since Applicant does not distinguish between the clay particles and the other inorganic fillers, the Examiner considers a binder comprising all clay particles would meet the claimed particles limitations since clay is inorganic. Jaffee et al., teach employing about 15 wt. % particles (column 6, 45-50). In other words, Applicant is not definitively claiming two separate types of particles. The composition targets for the composite are about 75% grass fibers, 20-22.5 % binder.

With specific regard to the claimed Ra smoothness of no greater than about 13 microns, it is the position of the Examiner that it is reasonable to presume that these properties are inherent

if not obvious to the composite of Jaffee et al. Support for said presumption is found in the use of compositionally similar materials (e.g., fibers of 13 micron fiber diameters and the claimed particle sizes), which would result in the claimed Ra smoothness property,. The burden is upon Applicant to prove otherwise. See *In re Fitzgerald*, 205 USPQ 594.

In addition the claimed Ra smoothness property would be exhibited once the Jaffee et al., composite was provided. See *In re Best* 195 USPQ at 433 (CCPA 1977).

Jaffee et al., teach that the mats produced according to this invention are useful as a facer for all types of boards such as wood boards, wood product boards, insulating boards, and hard boards of all types, and also as reinforcement and dimensional stabilizers (Abstract). Thus, claims 41-44 are rejected.

Jaffee et al., does not teach the claimed coating weight, however, the patent issued to Leclercq teaches providing plasterboard made of glass fibers with a mineral filler comprising binder (abstract). Said minerals include alumina and kaolin mixture (section 0043). Said plasterboard is also suitable for a facing material (abstract). Leclercq teach a coating in an amount of from 200 to 300 gms or from 18.6 to 27.9 gsf which overlaps the claimed coating weight. Leclercq specifically teach such a coating amount results in smooth surface such that no fibers projects therefrom (section 0037).

Therefore, motivated by the desire to provide a laminate with a smooth surface it would have been obvious to one having ordinary skill in the art at the time the invention was made to coat the mat of Jaffee et al et al., with the amount disclosed Leclercq.

With specific regard to claims 26 and 28, the combination of prior art does not specifically teach the claimed amount of filler, however, it is the position of the Examiner that

this is a result effective variable and is routinely adjusted by one versed in the art and would have been obvious to have increased or decrease the amount of filler within the coating which would directly affect the surface of the composite. Additionally, increasing the coating or filler amount would totally coat the nonwoven glass fibers so that they do not protrude out as suggested in column 1, 54-column 2, 5 and column 2, 49-60 of Jaffee et al., and section 0037 of Leclercq. Alternatively, increasing the amount of filler would allow the coating to stick better to fibers and also fill any voids within the nonwoven thereby making the coating smooth.

(10) Response to Argument

1. Claims 24, 26-30, and 39-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jaffee et al (US 6,187,697) in view of Leclercq (US 20030175478).

Applicant argues that the prior art of Jaffee et al., does not teach the claimed limitation of "at least 95 wt. % of which are less than 200 mesh". This argument is not found persuasive. As set forth above, Jaffee et al., teach that fibers and particles are bonded together with the binder (column 2, 20-25). Said particles are a size ranging from minus 40 and plus 100 mesh (column 2, 35-45). Applicant is not claiming multiple different types of particles of different mesh sizes. Applicant broadly claims particles less than 200 mesh. It is the position of the Examiner that Jaffee et al., clearly meets this limitation.

Applicant argues that the coating amount taught by Leclercq only slightly overlaps the claimed coating amount and does not disclose the claimed smoothness property. This argument is not found persuasive. As set forth above, Leclercq teach a coating in an amount of from 200 to 300 gms or from 18.6 to 27.9 gsf which overlaps the claimed coating weight. Leclercq specifically teach such a coating amount results in smooth surface such that no fibers projects therefrom (section 0037).

The Examiner maintains that the claimed Ra smoothness property would present once the mat provided by the combination of Jaffee et al., in view of Leclercq is provided as set forth above.

Applicant further argues that the methods used to produce the mats disclosed by Jaffee et al., would not result in the claimed Ra smoothness property. In response, it is the position of the

Examiner that Applicant's comparative examples do sufficiently capture the difference between the mat provided by the combination of prior art and the instant invention since Applicant also teach a method comprising drying in conventional oven (Applicant's specification, page 4, 30-page 5, 10). The prior art of Leclercq is silent with respect to the coating method used, however, Applicant argues that Leclercq does not disclose a mat having a coating that was dried in contact with a smooth surface. In response, it is respectfully pointed out that Applicant in not claiming such limitations either. As such, Applicant's arguments are not commensurate in scope with the claimed subject matter. Therefore, since Applicant is not claiming a product by process but rather a product, any arguments directed to the disclosed methods used by the prior art are not considered commensurate in scope with the claimed subject matter.

With specific regard to claims 26 and 28, the Examiner maintains that based on the combined teachings the claimed amount of filler, is a result effective variable could be routinely adjusted by one versed in the art. As such, it would have been obvious to increase or decrease the amount of filler within the coating which would directly affect the surface of the composite. Additionally, increasing the coating or filler amount would totally coat the nonwoven glass fibers so that they do not protrude out as suggested in column 1, 54-column 2, 5 and column 2, 49-60 of Jaffee et al., and section 0037 of Leclercq. Alternatively, increasing the amount of filler would allow the coating to stick better to fibers and also fill any voids within the nonwoven thereby making the coating smooth.

Accordingly, it is the position of the Examiner that the combination of prior art renders the instant invention obvious.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Lynda Salvatore/
Primary Examiner
Art Unit 1794
July 15, 2008

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